

## **II. Remarks**

### **A. Status of the Claims**

Claims 1-18 will be pending after entry of this amendment. Claims 1, 3, 4, 5, 9, 11, 12, 13 and 17 have been amended without prejudice. Support for the amendments can be found throughout the application as originally filed, specifically, e.g., in paragraphs [0024], [0118] and Figure 1 of the Specification. Applicants submit that no new matter has been added by virtue of this amendment.

### **B. Interview Summary**

Applicants wish to thank the Examiner for the courtesies extended to Applicants' representative during the August 4, 2009 telephone interview (the "Interview"). During the Interview, Applicants' representative discussed the current rejections under 35 U.S.C. §§ 112, 101 and 103. Applicants' representative provided the Examiner a proposed amended claim set, which was discussed in view of the current rejections.

Specifically, with respect to the rejections under 35 U.S.C. §§ 112 and 101, the Examiner suggested included the term "processor" into the claims to show that the claims are connected to hardware.

With respect to the rejection under 35 U.S.C. § 103, Applicants' representative explained the differences between the claimed invention and the Burns et al., Gerhard and Tsagarakis et al. references. Specifically, Applicants' representative explained that none of the references made obvious the limitation that the orders in the spreads could be initiated in two different markets.

**C. Claim Rejections Under 35 U.S.C. § 112, second paragraph**

In the Office Action, claims 1-18 were rejected under 35 U.S.C. § 112, second paragraph. Specifically, the Examiner alleged that claims 1, 9 and 13 recite a system, but “the body of the claim does not contain any limitations indicating the structure of the device”, and in claim 5, “it is unclear what functions are carried out by the computer.”

In response, as suggested by the Examiner during the Interview, independent claims 1, 5, 9, 13 and 17 have been amended without prejudice to recite that the systems and methods include a “processor running a spread engine” which carries out various claimed limitations. The claims have also been amended without prejudice to show how the components in the claimed systems are linked.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 112, second paragraph be removed.

**D. Claim Rejections Under 35 U.S.C. § 101**

In the Office Action, claims 1-18 were rejected under 35 U.S.C. § 101 for allegedly being directed to non-statutory subject matter.

In response, as suggested by the Examiner during the Interview, the claims have been amended without prejudice to recite that the systems and methods include a “processor running a spread engine” which carries out various claimed limitations.

Accordingly, Applicants submit that the claimed are not directed to “software per se” as originally alleged by the Examiner, but rather are directed to hardware, which is a statutory class in accordance with 35 U.S.C. § 101. Therefore, Applicants respectfully request that the rejection under 35 U.S.C. § 101 be removed.

**E. Claim Rejections Under 35 U.S.C. § 103(a)**

**1. Burns et al., Gerhard and Tsagarakis et al.**

In the Office Action, claims 1, 3-5, 7-9, 11-13 and 15-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,243,083 to Burns et al. in view of U.S. Patent No. 6,852,683 to Gerhard in further view of U.S. Publication No. 2002/0087455 to Tsagarakis et al.

This rejection is respectfully traversed. Applicants submit that the combined teachings of Burns et al., Gerhard and Tsagarakis et al. fail to render obvious the systems and methods for initiating trading of a spread of a security in a foreign market and a security in a domestic market, as presently claimed. The Examiner is reminded that pursuant to MPEP, 8<sup>th</sup> Ed., 7<sup>th</sup> Rev. § 2142, to establish a prima facie case of obviousness, and thus sustain the rejection of a claim under 35 U.S.C. § 103(a), there must be a clear articulation of the reasons why Applicants' claimed invention would have been obvious. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). The Supreme Court in KSR has further noted that an analysis supporting a rejection under 35 U.S.C. § 103(a) should be made explicit. Therefore, it is clear that an obviousness rejection "cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006). Moreover, "[t]o support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to

have been obvious in light of the teachings of the references.” MPEP, 8<sup>th</sup> Ed. 7<sup>th</sup> Rev. § 706.02(j).

As acknowledged by the Examiner, Burns et al. do not disclose the limitation of initiating a first order in a first market for a first security of the spread in a foreign currency and initiating a second order in a second market for a second security (See Office Action at page 5. Applicants further submit that Gerhard also does not disclose the limitation of initiating a first order in a first market for a first security of the spread in a foreign currency and initiating a second order in a second market for a second security. Therefore, the Examiner relies upon Tsagarakis et al. to allegedly teach this limitation. However, as discussed during the Interview, Applicants submit that Tsagarakis et al. do not disclose initiating two separate orders in two different markets. Applicants respectfully disagree with the Examiner’s position, as stated during the Interview, that “[t]he amount of profit generated by the currency transaction will depend on the *currency pair* being transacted and the relative economic parameters affecting them” (Tsagarakis et al. at paragraph [0045] (emphasis added)) is the same, or makes obvious, initiating trades in two different markets. Nevertheless, in order to expedite prosecution of the application, the claims have been amended to recite that the first order is initiated in a *foreign market* for a first security of the spread in a foreign currency and the second order is initiated in a *domestic market* for the second security of the spread. Applicants submit that, in view of Tsagarakis et al. a skilled artisan would not be lead to the claimed system or method of initiating at least two trades in two different markets, specifically where the two markets are a foreign market and a domestic market.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be removed.

**2. Burns et al., Gerhard, Tsagarakis et al. and Raykhman.**

In the Office Action, claims 2, 6, 10 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Burns et al. in view of Gerhard and Tsagarakis et al. and further in view of U.S. Patent No. 7,171,386 to Raykhman.

This rejection is respectfully traversed. Applicants submit that the combined teachings of Burns et al., Gerhard, Tsagarakis et al. and Raykhman fail to render obvious the systems and methods for initiating trading of a spread of two or more securities in two or more markets, as presently claimed.

For the reasons discussed *supra*, Applicants submit that Burns et al., Gerhard and Tsagarakis et al. specifically do not disclose the limitation of initiating a first order in a foreign market for a first security of the spread in a foreign currency and initiating a second order in a domestic market for a second security. Applicants further submit that Raykhman is relied upon by the Examiner solely as it relates to the limitations of dependent claims 2, 6, 10 and 14, and therefore fails to cure the deficiencies of Burns et al., Gerhard and Tsagarakis et al.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be removed.

### **III. Conclusion**

In view of the amendments made and arguments presented, it is believed that all claims are in condition for allowance. If the Examiner believes that issues may be resolved by a telephone interview, the Examiner is invited to telephone the undersigned at (973)597-6162. The undersigned also may be contacted via e-mail at [epietrowski@lowenstein.com](mailto:epietrowski@lowenstein.com). All correspondence should be directed to our address listed below.

### **AUTHORIZATION**

The Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to Deposit Account No. 50-1358.

Respectfully submitted,  
Lowenstein Sandler PC

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